

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

COPSTAT SECURITY INC.¹
Employer

- and -

Case No. 2-RC-22797

**INTERNATIONAL UNION, SECURITY, POLICE
AND FIRE PROFESSIONALS OF AMERICA**
Petitioner

DECISION AND ORDER DISMISSING PETITION

Copstat Security Inc., the Employer herein, is a security company engaged in interstate commerce. International Union, Security, Police and Fire Professionals of America, herein Petitioner, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act and at the hearing amended the petition to seek to represent security officers, lead officers and drivers performing guard duties as defined in Section 9(b)(3) of the Act, in two separate units located at (1) at its Empire State Building facility in Manhattan; and (2) at its various facilities located throughout the Bronx, New York.

Upon a petition filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. At the hearing, the parties stipulated and I find that the Employer, a domestic corporation with an office and principal place of business located in the Bronx, NY, is engaged in the business of providing armed and unarmed security services to residential and corporate customers located in the five Boroughs of New York City, Long Island, New Jersey and Connecticut. Annually, in the course and conduct of its operations, the Employer performs services in excess of \$50,000, directly for suppliers located outside the State of New York.

Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Employer did not stipulate to the status of International Union, Security, Police and Fire Professionals of America as a labor organization within the meaning of Section 2(5) and a qualified guard union within Section 9(b)(3) of the Act. The record establishes that Petitioner has been in existence since 1948 and became known by its present name based upon a resolution approved and adopted at the International Union's May 2002 convention. Petitioner represents security employees at a New York Power plant, contract security employees at various NASA facilities, and other security employees employed by Daimler Chrysler in Detroit, MI. Moreover, employees participate in

¹ The name of the Employer was corrected on the record at the outset of the hearing.

Petitioner's organization and attend regular meetings. The Petitioner represents employees with respect to their wages, hours of employment and other terms and conditions of employment.

Section 2(5) of the Act provides that a labor organization "means any organization of any kind, or any agency of employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." In order to meet the qualifications of Section 2(5) of the Act, there are no requirements of any specific structural formality. See *Butler Manufacturing Co.*, 167 NLRB 308 (1967). The Board has set forth its basic policy in determining whether an entity satisfies the requirements of Section 2(5) of the Act in *Alto Plastics Manufacturing Corp.*, 136 NLRB 850, 851-852 (1962).

Based upon the record evidence, I find that Petitioner exists for the purpose of dealing with employers concerning employees' wages, hours of employment, and other terms and conditions of employment, and that employee participate in it. Therefore, I find that Petitioner satisfies the requirements set forth in *Alto Plastics* and is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

5. Petitioner seeks to represent two separate units of security officers employed by the Employer. One unit would be comprised of all of the Employer's security employees employed at its various jobsites located in the Bronx, New York and the other unit would include all security officers employed by the Employer at the Empire State Building in Manhattan. The Employer contends

that both units sought by Petitioner are inappropriate and that the only appropriate unit here would encompass all of the Employer's security officers employed at its New York City jobsites.

OVERVIEW OF OPERATIONS

The Employer provides armed, unarmed and plainclothes security services to various clients throughout the five boroughs of New York City, Long Island, New Jersey and Connecticut. In New York City, the Employer serves approximately 145 clients who require security services at various types of facilities, including residential communities, corporate buildings, commercial areas, construction areas, financial institutions and health facilities. The Employer also provides an alarm response service for ADT where the Employer responds via radio to alarms at certain customers' locations and if necessary, notifies the local police department to follow up.

The Employer maintains its company headquarters on East Tremont Avenue, Bronx, New York, which houses the offices of the president, the vice president, the director of human resources, account managers/area managers and dispatchers. The Employer also maintains a dispatch room at the Empire State Building in Manhattan and another dispatch office in Brooklyn. While the Bronx dispatch office operates 24-hours each day, the dispatch offices in Brooklyn and at the Empire State Building operate only for limited hours.²

All payroll, human resource functions, purchasing, training and billing are handled out of the Employer's Bronx headquarters. In addition, many, but not all,

security officers come to the Bronx headquarters on Fridays to pick up their paychecks. Paychecks are also distributed at the Empire State Building and at five other Manhattan sites, as well as at the Atlantic Center Mall site in Brooklyn.

The dispatchers deal with guards missing an assignment and other client complaints. If a guard calls in and reports he or she will not be at work or if a guard does not appear for work, the dispatcher notifies a supervisor to cover the post while he or she utilizes the City-wide list to assign a replacement guard to cover the assignment. The dispatcher is familiar with available “floaters” or employees who are available to perform fill-in work at various sites as needed³. A dispatcher may also move a security officer from one site to another on a temporary basis. The dispatch office in the Empire State Building was created to service the client at that location and serves as the dispatch office for that site and other sites in Manhattan as well. The Brooklyn dispatch office is located at a large site in that Borough and serves as dispatch office in that geographical location. Both of these dispatch centers, called substations by the Employer, only operate during limited hours, while the Bronx dispatch office is in operation all 24-hours each day. Thus, during the substations off-hours all dispatching is done from the Bronx.

Security officers are required to undergo training before they are licensed to work in this industry. New York State requires an 8-hour pre-assignment training that the Employer does not offer. Upon hire, the Employer’s security

² The Employer has started to use new computer software, called Valiant, for payroll and scheduling. It anticipates that in the future this software will be used by employees to “call on” and “call off” using a PIN number.

³ The Employer maintains a roster of approximately 50 to 60 floaters.

officers may take the 16-hour on-the-job training course, also required by the State, at the Employer's training center located at headquarters⁴. The final licensing requirement is an annual 8-hour refresher course that is offered by the Employer at its training center as well.

FIELD OPERATIONS

The Employer employs approximately 1,000 security officers throughout the five boroughs of New York City. Through these security officers the Employer provides on-site security services for its 145 customers, some of which have multiple sites. The Employer employs 425 to 450 security officers in Manhattan, 75 of whom are assigned to the Empire State Building and approximately 300 to 350 guards are assigned to its various sites in the Bronx. The Empire State Building site is the Employer's largest Manhattan site and employs 15 to 18 guards per shift.

Depending on the site and the customer, the security officers are either assigned to a standing post or a walking or mobile patrol and all shifts, regardless of location, have similar starting times. The responsibilities of a security officer employed by the Employer include observing the area they are securing and the people who are present there and serving as a deterrent. Security officers, who are not law enforcement officers, are prohibited from using force on anyone. An overwhelming number of the Employer's security guards, including those employed at the Empire State Building, wear a uniform, which is

⁴ Approximately 60% of the Employer's security officers take the 16-hour course at the Employer's training center.

provided by the Employer.⁵ They also possess a flashlight, map and walkie-talkie all of which are purchased by the Employer through its Bronx headquarters. The Employer also purchases a firearm for the armed guards it employs.

Supervision

Supervision of the security officers varies from site to site. Where the number of guards at a site is sufficiently large to require it, there will be a site supervisor. In the Bronx, more than half of the Employer's jobsites do not have a site supervisor. The site supervisor ensures that security officers are in compliance with their obligation to arrive on time, to be at their post, to be in uniform and to perform their duties. Site supervisors have the authority to prepare written warning notices and forward them to the human resources department in the Bronx headquarters.

During the night hours, the Employer utilizes three mobile supervisors in certain areas. These mobile supervisors travel between sites to ensure the performance of those security officers who are working the night shifts.

The Employer also employs account managers who maintain contact with the client and ensure that the terms of the Employer's agreement with the client are being complied with. They also are involved with the pricing of the contract. Any raises for security officers must be recommended by the account manager to the company president. In addition to the training program described above, the area managers generally meet newly hired security officers at their post and ensure that they know their job duties and responsibilities.

⁵ Some guards wear the blazer type uniform, while others wear a sweater and baseball cap. Regardless of the type of uniform, they all have the Employer's emblem.

The Employer uses 9 to 10 area managers in New York City, including Long Island, New Jersey and Connecticut. The area manager and account manager possess very similar responsibilities and appear to be interchangeable with respect to oversight of the field operations under their control. These individuals, who maintain a close rapport with the clients, visit the sites periodically to ensure compliance with the contract. Each account manager/field manager is responsible for a specific area. There are two account managers/area managers who work out of the Bronx headquarters and who are responsible for the work sites maintained by the Employer in the Bronx. One of the Bronx area managers also services several clients in Manhattan. The Employer's vice president serves as area manager for the Empire State Building work site and for several other Manhattan sites. There are also several other area managers for Manhattan.

Employee benefits

All security guards employed by the Employer regardless of the location of their assignment receive the same benefits. There is a 401(k) plan available for all who choose to participate and all security employees who have worked full-time for 90 days may apply for health benefits, the cost of which is borne by the employee. All are subject to the same vacation policy in which full-time employees, who have worked 52 consecutive weeks, are entitled to a one-week vacation upon a minimum of two-months advance notice. The grievance procedure applies to all employees, regardless of their work location. All security

officers upon their hire are given a copy of the employee handbook, which applies to employees regardless of their work site.

Pay rates for guards vary according to the Employer's contractual agreement with the client. This applies throughout the 5 boroughs of New York City. It further appears that all wage rates, which are dependent upon the contract negotiated with each client, are determined centrally at the Employer's headquarters for each site throughout the City.

In a post-hearing exhibit that was submitted with the parties' agreement in satisfaction of Petitioner's subpoena duces tecum, it appears that during 2002/2003 the pay rates varied depending upon the site throughout the City. The pay rate varied from \$6.00 per hour to \$11.00 per hour at the 38 Bronx sites and from a low of \$6.00 to a high of \$9.00 at the 83 Manhattan sites. The pay range at the Empire State Building starts at \$7.00 and goes to a high of \$8.50 per hour.

Armed guards will earn a significantly higher wage rate. They will earn from \$15 to \$17 per hour.

Several client contracts contain certain specifications regarding compensation, such as a wage scale with steps, benefits, uniforms, discipline or qualifications. There are three such contracts for clients in the Bronx, three in Manhattan, two in Brooklyn, two in Queens and one in Staten Island. The contract with the client at the Empire State Building site does not include any provisions requiring benefits or a specific uniform.

Transfers and Interchange

Stephen Walsh, the Employer's Director of Human Resources, testified that security officers transfer from one site to another regularly. He specifically stated that employees are transferred from one site to a site in another borough on a regular basis. Transfers can be done on a temporary basis or on a permanent basis. Walsh testified that an employee might request a transfer based upon travel needs or the client may be dissatisfied with the employee. When an employee transfers from one site to another, his or her wage rate may change, as the pay rate is determined for each site based on the contract. Area managers will provide input on transfers. While Walsh testified that final authority regarding transfers remains with headquarters, he could not recall rejecting an area manager's recommendation on a transfer. He estimated that there are from 10 to 20 permanent guard transfers per week and another 5 to 6 temporary transfers per week. Guards assigned to the Empire State Building site are also transferred to other sites and guards from other sites are transferred to the Empire State Building as well. The Employer's response to Petitioner's subpoena discloses that from July 2003 to December 2003, there were an average of 55 transfers into and out of the Empire State Building per month.

During the six-month period ending in December 2003, the record discloses that there were also significant numbers of employees transferred between Manhattan sites and sites located in the Bronx. While only 6 employees per month transferred from Manhattan sites into sites located in the Bronx, there

was a monthly average of 40 security guards transferred from Bronx locations to Manhattan sites.

Hiring and Firing

This industry is beset with a very high turnover rate and hiring is an on-going process⁶. All hiring is done centrally by the Employer through the Human Resources office. The Employer places advertisements in the local newspapers throughout the area when they are recruiting security officers. While, on occasion, the Employer will recruit for a specific site, the overwhelming number of help wanted ads solicits potential employees for all of the Employer's sites in New York City and the outlying area.

Walsh conducts the interviews in the Bronx office or in the Empire State Building or Brooklyn dispatch offices. He then checks the applicants file to ensure it is complete and that the State's training requirement has been satisfied. Walsh then sends the applicants' files to Employer's President Wood for approval. Once Wood approves the hire, Walsh assigns the newly hired security officer to a site in one of the five boroughs of New York City. It also appears from the record that area managers may make recommendations as to hires from time to time.

Decisions to discharge employees are made solely at headquarters by Walsh. Area managers can make recommendations regarding the discharge of an employee, but the final decision is made only after Walsh conducts an investigation into the circumstances. Walsh recalled several instances where he

⁶ It appears that the turnover rate at the Empire State Building is similar to that throughout the industry.

disagreed with the account managers' recommendation to discharge and he determined that a transfer was warranted instead of a discharge.

ANALYSIS

It is well established that a petitioned-for unit need only be an appropriate unit, not the most appropriate unit. *Morand Bros. Beverage*, 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951). The Board's task, therefore, is to determine whether the petitioned-for unit is an appropriate unit, even though it may not be the only appropriate unit or the ultimate unit. In making unit determinations, the Board first looks to the unit sought by the petitioner. If it is appropriate, the inquiry ends and the Board does not evaluate any competing unit contentions. If, however, the unit is inappropriate, the Board will scrutinize the employer's proposal. *Dezcon, Inc.*, 295 NLRB 109 (1989).

The issue herein is whether each of the units sought by the Petitioner is an appropriate unit for the purposes of collective bargaining. Petitioner asserts that each unit is an appropriate unit. Petitioner contends that the Empire State Building unit is a single facility unit and thus is presumptively appropriate. Petitioner contends that the unit of all of the Employer's security officers employed in the Bronx is a separate geographical grouping and appropriate for bargaining.

For the reasons set forth below, I find that the two units sought by Petitioner are not appropriate units and that the only appropriate unit is one comprised of the Employer's New York City jobsites.

EMPIRE STATE BUILDING

A single plant unit is presumptively appropriate. As the Petitioner seeks a presumptively appropriate unit, the Employer must introduce relevant, affirmative evidence to rebut that presumption. *Waste Management Northwest*, 331 NLRB 309 (2000); *Dayton Transport Corp.*, 270 NLRB 1114, 1115 (1984). To rebut the presumption, the Employer must show that the single plant unit has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. To determine whether the presumption has been rebutted, the Board considers such factors as centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, function, and working conditions; degree of employee interchange; geographic proximity; and bargaining history, if any. *Dayton Transport Corp.*, *supra*; *Orkin Exterminating Co.*, 258 NLRB 773 (1981). Inasmuch as there is no bargaining history at any of the Employer's facilities, further discussion of that factor is unnecessary and our analysis focuses on the remaining relevant factors.

The Employer here has met its burden of establishing a functional integration so substantial as to negate the separate identity of the Empire State unit sought by the Petitioner. *R & D Trucking, Inc.*, 327 NLRB 531 (1999). Here, the record reflects the highly integrated nature of the Employer's New York City operations and the significant amount of employee interchange both into and out of the Empire state Building. The record establishes that the Employer operates its New York City jobsites with a very considerable amount of administrative

control through its headquarters in the Bronx. The Employer's Director of Human Resources exercises a significant degree of control over hiring, firing, and transfers for all of the Employer's New York City operation. Benefits are also established centrally and apply to all employees.

In considering the factors that the Board analyzes to determine whether the single-facility presumption has been rebutted, I accord great significance to the significant amount of interchange involving employees at the Empire State Building. However, in addition to interchange, other factors weigh heavily in support of finding that the single-location presumption has been rebutted. The evidence establishes that the Empire State Building is under the supervision of the Employer's vice president who serves as the area manager for this location. In addition this area manager supervises other locations within Manhattan and his authority is extremely limited and subject to the final authority which is vested in headquarters with respect to hiring, firing, and transfer of employees. The lack of any local autonomy at the Empire State Building is sufficient to rebut the single-facility presumption where, as here, there is ample evidence of temporary and permanent interchanges among employees, common wage rates, benefits, and personnel policies, and fairly close geographic proximity and functional integration. See *e.g. Waste Management Northwest*, *supra*; *Dayton Transport Corp.*, *supra*; *White Castle System*, 264 NLRB 267, 268 (1982); *Budget Rent A Car Systems*, 337 NLRB No. 147 (2002); *Orkin Exterminating Co.*, *supra*; *R & D Trucking, Inc.*, *supra* (reversing Regional Director's Decision to include employees at separate facility where company president supervised employees

at both facilities); *Cargill, Inc.*, 336 NLRB No. 118 (2001) (single-facility presumption not rebutted where facility had significant local autonomy over labor relations and separate supervisory staff at each facility); *Rental Uniform Service, Inc.*, 330 NLRB 334 (1999) (reversing Regional Director's inclusion of locations that possessed significant local autonomy with respect to hiring, discipline, and day-to-day supervision of employees and other labor relations matters); *New Britain Transportation Co.*, 330 NLRB 397 (1999) (centralized control over labor policies is insufficient to rebut presumption where evidence demonstrates significant local autonomy over labor relations); *Bowie Hall Trucking*, 290 NLRB 41, 43 (1988) (reversing Regional Director's conclusion that facility lacked local autonomy because manager only exercised routine decision making power where manager played role in hiring and disciplinary process); *AVI Foodsystems, Inc.*, 328 NLRB 426 (1999) (single-facility presumption not rebutted where immediate supervision and day-to-day control over employees were separate and autonomous from those of employees at the separate facility).

Thus, I find that a unit limited to security employees employed by the Employer at the Empire State Building is not an appropriate unit for collective bargaining.

BRONX FACILITIES

Petitioner, contrary to the Employer, would also find a unit of all security employees employed at various Bronx, New York facilities to be an appropriate geographical grouping and an appropriate unit.

In determining whether to direct an election limiting a unit to a grouping that is less than employer-wide, the Board considers a number of factors, including (1) centralization of management, particularly regarding labor relations; (2) the extent of employee interchange; (3) the degree of interdependence or autonomy of facilities; (4) differences or similarities in skills and functions of employees; (5) geographical location of the facilities in relation to each other; and (6) prior bargaining history. *Trustees of Columbia University*, 222 NLRB 309 (1976). The Board may also consider the extent of the Union's organization, although this factor may not be controlling. *Metropolitan Life Insurance Co.*, 156 NLRB 1408 (1966).

In the instant case, Petitioner has failed to demonstrate why a unit limited to employees employed at the Bronx locations would be an appropriate unit for collective bargaining. Petitioner presented no evidence to establish that this group of employees constitutes a separate and identifiable unit based on either geographic location or the Employer's organizational structure.

The evidence presented in this record, as discussed above with respect to the single location unit sought by Petitioner, reveals that the management of the Employer's operation is highly centralized in its Bronx headquarters. It appears that the Employer has a highly centralized management structure. In this regard, all recruitment and hiring is done by Stephen Walsh, the Director of Human Resources. Walsh also handles the initial post assignments of the security guards and determines who is to be fired after he conducts an investigation into the incident brought to his attention by an area manager. Moreover, all

personnel files, including the employee applications and state security guard applications, and all purchasing are handled centrally. While the Employer's wage policies are standardized throughout all the facilities, as are all benefits, variations in wages may occur among facilities based upon differences in the Employer's contract with the clients. The Employer's rules and regulations governing conduct by all security guards are centrally promulgated and enforced. While the Employer utilizes area managers, and two area managers have responsibilities over the Bronx sites, these managers do not exclusively manage the Bronx. One of the managers also has responsibility for Manhattan sites. The record further reveals that both permanent and temporary transfers occur frequently between facilities in various boroughs of New York City, including the Bronx.

Based upon the foregoing, I cannot conclude that the Employer's Bronx location is a separate and identifiable geographical area so as to warrant a finding that they constitute a separate appropriate unit.

Accordingly, IT HEREBY IS ORDERED that the Petition filed by the
Petitioner be, and it hereby is, dismissed.⁷

Dated at New York, New York
This 13th day of February 2004

_(s) Celeste J. Mattina
Celeste J. Mattina
Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10278

Code: 347-4060-5000
420-4008

⁷ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 Fourteenth Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by **February 27, 2004**.